

Assembly Bill No. 1877

Passed the Assembly August 28, 2012

Chief Clerk of the Assembly

Passed the Senate August 23, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Section 7500.3 of the Business and Professions Code, relating to repossessionors.

LEGISLATIVE COUNSEL'S DIGEST

AB 1877, Ma. Repossession agencies: exemptions.

Existing law, the Collateral Recovery Act, provides for the licensure and regulation of repossession agencies by the Bureau of Security and Investigative Services under the supervision and control of the Director of Consumer Affairs. A violation of the act is a misdemeanor. The act provides that a repossession agency does not include the legal owner of collateral that is subject to a security agreement or a bona fide employee of the legal owner of collateral that is subject to a security agreement.

This bill would, until January 1, 2018, add that a repossession agency does not include a dealer regularly engaged in the sale of specified collateral that is subject to a specified security agreement, and that dealer's bona fide employees, provided that specified requirements are met. The bill would also prohibit, until January 1, 2018, the dealer, its bona fide employees, and other specified entities from instructing, coercing, or attempting to coerce another person to violate laws, regulations, and rules regarding the recovery of collateral, as specified. Because a violation of this prohibition would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 7500.3 of the Business and Professions Code is amended to read:

7500.3. (a) A repossession agency shall not include any of the following:

(1) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(2) Any person organized, chartered, or holding a license or authorization certificate to make loans pursuant to the laws of this state or the United States who is subject to supervision by any official or agency of this state or the United States.

(3) An attorney at law in performing his or her duties as an attorney at law.

(4) The legal owner of collateral that is subject to a security agreement; or a bona fide employee employed exclusively and regularly by the legal owner of collateral that is subject to a security agreement. With regard to collateral subject to registration under the Vehicle Code, the legal owner shall be the legal owner listed on the records of the Department of Motor Vehicles or the seller or lessor named on a valid conditional sales contract or rental or lease agreement if the seller or lessor is a licensed vehicle dealer as defined in Section 285 of the Vehicle Code.

(5) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties.

(6) A qualified certificate holder or a registrant when performing services for, or on behalf of, a licensee.

(7) A dealer, including its bona fide employees, regularly engaged in the sale of collateral designed primarily for agricultural use, as defined in subdivision (b) of Section 51201 of the Government Code, for use in the care of lawns and gardens, or for use as special construction equipment, as defined in subdivision (b) of Section 565 of the Vehicle Code, or for use in the production, generation, storage, or transmission of mechanical or electric energy, that is subject to a security agreement of the manufacturer or an affiliate of that manufacturer, provided the following requirements are met:

(A) The dealer or the secured party maintains adequate records of all repossessions.

(B) The dealer or the secured party completes a collateral condition report.

(C) The dealer or the secured party records any odometer or hour meter readings.

(D) The dealer or the secured party creates records of all transactions pertaining to the sale of the collateral, including, but not limited to, bids solicited and received, cash received, remittances to the seller, and allocation of any moneys not so remitted to appropriate ledger accounts.

(E) The dealer removes and stores any personal effects that were taken with the collateral for a minimum of 60 days in a secure manner, completes an inventory of the personal effects, and notes the date that inventory is taken.

(F) If personal effects that were taken with the collateral are to be released to someone other than the debtor, the dealer shall request written authorization to do so from the debtor. The dealer may dispose of personal effects after storing them for at least 60 days pursuant to subparagraph (E).

(b) Entities described in paragraph (7) of subdivision (a), or a debtor, lienholder, lessor or lessee, or an agent thereof shall not by any means, directly or indirectly, expressed or implied, instruct, coerce, or attempt to coerce another person to violate any law, regulation, or rule regarding the recovery of collateral, including, but not limited to, the provisions of this chapter or Section 9609 of the Commercial Code.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 2. Section 7500.3 is added to the Business and Professions Code, to read:

7500.3. A repossession agency shall not include any of the following:

(a) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(b) Any person organized, chartered, or holding a license or authorization certificate to make loans pursuant to the laws of this state or the United States who is subject to supervision by any official or agency of this state or the United States.

(c) An attorney at law in performing his or her duties as an attorney at law.

(d) The legal owner of collateral that is subject to a security agreement or a bona fide employee employed exclusively and regularly by the legal owner of collateral that is subject to a security agreement. With regard to collateral subject to registration under the Vehicle Code, the legal owner shall be the legal owner listed on the records of the Department of Motor Vehicles or the seller or lessor named on a valid conditional sales contract or rental or lease agreement if the seller or lessor is a licensed vehicle dealer as defined in Section 285 of the Vehicle Code.

(e) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties.

(f) A qualified certificate holder or a registrant when performing services for, or on behalf of, a licensee.

(g) This section shall become operative on January 1, 2018.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2012

Governor